

## COMMON INTEREST COMMUNITY BOARD

### MINUTES OF MEETING

The Common Interest Community Board met on Thursday, June 26, 2014, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

Kimberly Kacani  
Thomas Mazzei  
Christiaan Melson, Vice-Chair  
Jacquelyn Riggs  
Douglas Rogers  
Lucia Anna Trigiani, Chair

Board members Enrico Cecchi, Elena Ferranti, and Kristie Helmick were not in attendance.

DPOR staff present for all or part of the meeting included:

Jay W. DeBoer, Director  
Mark N. Courtney, Senior Director for Regulatory and Public Affairs  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Jill Hrynciw, Board Administrator  
Liz Hayes, Fair Housing Administrator  
Deanda Shelton, Assistant Fair Housing Administrator  
Joseph Haughwout, Adjudication Staff  
Betty C. Jones, Administrative Assistant

James Flaherty from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:38 a.m. **Call to Order**

Mr. Rogers moved to approve the revised agenda. Mr. Mazzei seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani. **Approval of Agenda**

Ms. Trigiani welcomed and announced that Jay DeBoer, who was Director of DPOR between 2006 and 2010, has been appointed as the new Director of DPOR. Mr. DeBoer stated that it was nice to be back at DPOR. **Introduction of Director**

Mr. Rogers moved that the Board approve the minutes of the March 27, 2014, Training Program Review Committee meeting. Mr. Mazzei seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

**Approval of Minutes**

Ms. Riggs moved that the Board approve the minutes of the March 27, 2014, Board meeting. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

Ms. Kacani moved that the Board approve the minutes of the June 25, 2014, Training Program Review Committee meeting. Mr. Rogers seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

**Public Comment Period**

Ms. Hrynciw provided a memorandum to the Board regarding recent condominium registration annual reporting. The four declarants who did not respond are BQI Group, Inc.; Centex Homes; Talus, II, LLC; and Tivest Developments, LLC. These four Declarants did not respond to the solicitation letter, second notice letter, or final notice letter.

**Consideration of Temporary Cease and Desist Order Regarding Condominium Registration Number**

The Board reviewed an amended memorandum from staff dated June 25, 2014, to consider issuance of a temporary cease and desist order against BQI Group, Inc., the declarant of Bonney's Quay Condominium, Condominium Registration Number 0517050252.

**0517050252, Bonney's Quay Condominium**

After reviewing the facts and information presented in the amended memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration as required by § 55-79.93 of the Code of Virginia.

The Board reviewed an amended memorandum from staff dated June 25, 2014, to consider issuance of a temporary cease and desist order against Centex Homes, the declarant of Stonebridge Gardens Condominium, Condominium Registration Number 0517060274.

**Consideration of Temporary Cease and Desist Order Regarding Condominium Registration Number**

After reviewing the facts and information presented in the amended memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration as required by § 55-79.93 of the Code of Virginia.

**0517060274, Stonebridge Gardens**

The Board reviewed an amended memorandum from staff dated June 25, 2014, to consider issuance of a temporary cease and desist order against Talus, II, LLC, the declarant of 401 Dinwiddie Street Condominiums, Condominium Registration Number 0517090137.

After reviewing the facts and information presented in the amended memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration as required by § 55-79.93 of the Code of Virginia.

After discussion, Mr. Melson made a motion to issue Temporary Cease and Desist Orders in accordance with § 55-79.100(b) of the Code of Virginia for Bonney's Quay Condominium, Stonebridge Gardens Condominium, and 401 Dinwiddie Street Condominiums in the interest of protecting the public from harm. The Board ordered BQI Group, Inc., the declarant of Bonney's Quay Condominium, Centex Homes, the declarant of Stonebridge Gardens Condominium, and Talus, II, LLC, the declarant of 401 Dinwiddie Street Condominiums, to cease and desist from the sale of units in the condominium projects until an annual report is submitted and determined to be acceptable by the Board. If the declarants of Bonney's Quay Condominium, Stonebridge Gardens Condominium, and 401 Dinwiddie Street Condominiums, fail to cease and desist the unlawful practice after entry of the Orders, the Board may refer the matters for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions permitted by Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia. These three orders remain in effect until the declarants submit acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies or the matters are adjudicated, whichever is later. Mr. Mazzei seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

The Board reviewed an amended memorandum from staff dated June 25, 2014, to consider issuance of a temporary cease and desist order against Tivest Developments, LLC, the declarant of Broad Creek Villas, a Condominium, Condominium Registration Number 0517090132.

After reviewing the facts and information presented in the amended memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration as required by § 55-79.93 of the Code

**Condominium**

**Consideration of  
Temporary Cease  
and Desist Order  
Regarding  
Condominium  
Registration  
Number  
0517090137,  
401 Dinwiddie  
Street  
Condominiums**

**Consideration of  
Temporary Cease  
and Desist Order  
Regarding  
Condominium  
Registration  
Number  
0517090132,  
Broad Creek Villas,**

of Virginia, has failed to maintain an assessment bond or letter of credit pursuant to § 55-79.84:1 of the Code of Virginia, and has failed to amend and subsequently file the public offering statement pursuant to § 55-79.90 C of the Code of Virginia as well as 18 VAC 48-20-670 and 18 VAC 48-20-680 of the Condominium Regulations.

**a Condominium**

After discussion, Ms. Kacani made a motion to issue a Temporary Cease and Desist Order in accordance with § 55-79.100(b) of the Code of Virginia for Broad Creek Villas, a Condominium in the interest of protecting the public from harm. The Board ordered Tivest Developments, LLC, the declarant of Broad Creek Villas, a Condominium, to cease and desist from the sale of units in the condominium project until an annual report, assessment bond or letter of credit, and amended public offering statement are submitted and determined to be acceptable by the Board. If the declarant of Broad Creek Villas, a Condominium, fails to cease and desist the unlawful practice after entry of the Order, the Board may refer the matter for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions permitted by Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia. This order remains in effect until the declarant submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies or the matter is adjudicated, whichever is later. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

In the matter of **File Number 2014-00466, CICB vs. ProCAM, LLC**, the Board members reviewed the record, which consisted of the Notice of Prima Facie Case, the Report of Findings, including exhibits and the Recommendation. A representative of ProCAM, LLC did not request an Informal Fact-Finding Conference. Therefore, this case was considered pursuant to 54.1-201.A.9 of the Code of Virginia.

**File Number 2014-00466, CICB vs. ProCAM, LLC**

After discussion, a motion was made to adopt the Report of Findings which contains the facts regarding the regulatory and/or statutory issues in this matter, and adopt the Recommendation as to the facts, which cites the following violations of the Board's regulations.

Ms. Kacani made a motion to accept the violation of 18 VAC 48-50-190.14 (Count 1). Mr. Rogers seconded the motion which was unanimously approved by: Kacani, Melson, Riggs, Rogers, and Trigiani.

Ms. Kacani made a motion to accept the violation of 18 VAC 48-50-220.B (Count 2). Ms. Riggs seconded the motion which was

unanimously approved by: Kacani, Melson, Riggs, Rogers, and Trigiani.

Ms. Kacani made a motion to accept the violation of 18 VAC 48-50-190.9 (Count 3). Mr. Melson seconded the motion which was unanimously approved by: Kacani, Melson, Riggs, Rogers, and Trigiani.

Ms. Kacani moved to amend the Recommendation contained in the Report of Findings as to i) the license number referenced contained transposed digits and should read "0501000031", and ii) the sanctions due to the aggravated and serious nature of the violations. The Board voted to increase the monetary penalties imposed from those outlined in the Recommendation as follows:

- Count 1: \$1,500.00, for a total monetary fee of \$1,500.00
- Count 2: \$1,500.00, for a total monetary fee of \$1,500.00
- Count 3: \$1,500.00, for a total monetary fee of \$1,500.00

Ms. Riggs seconded the motion which was unanimously approved by: Kacani, Melson, Riggs, Rogers, and Trigiani.

Ms. Kacani made a motion to accept the recommendation to revoke ProCAM, LLC's license for violations of Counts 1, 2, and 3. Ms. Riggs seconded the motion which was unanimously approved by: Kacani, Melson, Riggs, Rogers, and Trigiani.

As the reviewing Board member, Mr. Mazzei recused himself from the meeting and was not present during the discussion or vote.

The Board agreed by consensus to direct staff to take immediate steps to advise all condominium unit owners' associations, property owners' associations, and cooperative associations who are managed by ProCAM, LLC that ProCAM, LLC's manager license was revoked. In addition, a press announcement will be posted on the DPOR website.

The Board recessed for a break at 10:46 a.m. and reconvened at 11:05 a.m.

**Break**

In the matter of **File Number 2014-02484, Susan Bailey**, the Board members reviewed the record of the Informal Fact-Finding Conference which consisted of the application file, exhibits and transcript, and the Summary of the Informal Fact-Finding Conference. Ms. Kacani moved to adopt the summary and recommendation of the hearing officer and to approve the application for a common interest community manager

**File Number 2014-02484, Susan Bailey**

principal or supervisory employee certificate. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

Ms. Henshaw gave an update on the current status of the regulatory review processes for the Board's regulatory packages.

**Update on  
Regulatory Review  
Processes**

The Common Interest Community Board Condominium Regulations are in final stage currently undergoing review by the Governor's office.

The Common Interest Community Board Time-Share Regulations are in proposed stage currently undergoing review by the Governor's office.

Ms. Henshaw advised the Board that amendment of the Condominium Regulations was necessary as a result of changes to the Condominium Act pursuant to Chapter 215 of the 2014 Virginia Acts of Assembly (House Bill 899). Because the amendments to the regulations are necessitated by a statutory change, Ms. Henshaw indicated the change could be accomplished through an exempt action in accordance with regulatory review guidelines. After review, Mr. Mazzei moved to authorize staff to proceed with filing an exempt action to amend the Common Interest Community Board Condominium Regulations as necessary to comply with the referenced statutory change and to authorize staff, in consultation with the Board chair, to make any minor changes necessary to gain approval during the executive branch review. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

**Consider Exempt  
Action to  
Condominium  
Regulations to  
Incorporate  
Amendments  
Resulting from  
House Bill 899**

Ms. Trigiani transferred the Chair to Mr. Melson and recused herself from the meeting.

**Transfer of Chair**

Ms. Hrynciw provided a summary of the Training Program Review Committee meeting which was held on June 25, 2014. On July 1, 2012, the Board began certifying principal and supervisory employees of common interest community managers. As a condition to renew their certificates, individuals are required to complete two hours of Board-approved Virginia common interest community law and regulation training, as well as two hours of Board-approved training that encompasses Virginia fair housing laws related to common interest communities. The Committee reviewed and recommended approval of two training programs.

**Report from June  
25, 2014, Training  
Program Review  
Committee**

The Committee reviewed for approval the training program application submitted by MercerTrigiani. The training program titled *2014 Legal and Legislative Update for Virginia Common Interest Community*

**Review of CIC Law  
and Regulation  
Training Program:**

*Associations* was submitted for approval as a Virginia common interest community law and regulation training program. MercerTrigiani requested retroactive approval to June 3, 2014. After review by the Committee, the Committee recommended that the Board approve the training program as presented. After discussion, Mr. Rogers moved that the Board accept the recommendation of the Committee and approve the application submitted by MercerTrigiani for *2014 Legal and Legislative Update for Virginia Common Interest Community Associations* as a Virginia common interest community law and regulation training program with retroactive approval to June 3, 2014. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, and Rogers. Ms. Trigiani did not participate in the discussion or vote.

**MercerTrigiani**

Ms. Trigiani returned to the meeting and resumed the position of Chair.

**Transfer of Chair**

The Committee reviewed for approval the training program application submitted by DPOR Fair Housing Office. The training program titled *Virginia Fair Housing Law for Common Interest Communities* was submitted for approval as a common interest community-related fair housing training program. After review by the Committee, the Committee recommended that the Board approve the training program contingent on references to “housing provider” being changed, as appropriate, to reference common interest communities. Ms. Liz Hayes and Ms. Deanda Shelton were present from DPOR Fair Housing Office to address any questions. Ms. Hayes provided revised program materials incorporating the Committee’s recommendation. After discussion, Mr. Rogers moved that the Board accept the recommendation of the Committee and approve the application submitted by DPOR Fair Housing Office for *Virginia Fair Housing Law for Common Interest Communities* as a common interest community-related fair housing training program. Ms. Riggs seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

**Review of CIC Fair  
Housing Training  
Program:  
DPOR Fair Housing  
Office**

The Board adopted a guidance document on June 27, 2013 regarding specific maximum allowable fees set by the Condominium Act and Property Owners Association Act that may be charged by the preparer of disclosure packets and resale certificates. This guidance document was subsequently amended March 27, 2014. Another amendment is now required to incorporate changes to the language in Subsection B 2 of §§ 55-509.6 and 55-79.97:1 resulting from HB 900 of the 2014 General Assembly Session.

**Consider  
Amendment to  
Guidance Document  
Regarding Specific  
Maximum  
Allowable Fees Set  
by the  
Condominium Act  
and Property  
Owners Association**

The Consumer Price Index-Urban on 12/31/07 was 210.036, on

12/31/08 was 210.228, on 12/31/09 was 215.949, on 12/31/10 was 219.179, on 12/31/11 was 225.672, and on 12/31/12 was 229.601. With a starting point of 100, the compounded increase between 12/31/07 and 12/31/12 was 9.31%. Mr. Melson made a motion to amend the guidance document prepared by staff to include the amended section as follows:

**Act that may be Charged by the Preparer of Disclosure Packets and Resale Certificates**

2. The preparation and delivery of the disclosure packet or resale certificate, as applicable, pursuant to §§ 55-509.6.B.2 and 55-79.97:1.B.2 of the *Code of Virginia*, in (i) paper format, a fee not to exceed **\$163.97** for no more than two hard copies, or (ii) electronic format, a total fee not to exceed **\$136.64**, for a copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requestor;

Mr. Mazzei seconded the motion which was unanimously approved by: Kacani, Mazzei, Melson, Riggs, Rogers, and Trigiani.

Staff has received questions from declarants and representatives regarding the Board's requirements and the process for updating the condominium registration as a result of pending amendments to the Code of Virginia. Chapter 215 of the 2014 Virginia Acts of Assembly (HB 899), amends the Code of Virginia by decreasing from 10 days to five days the time period in which a purchaser may cancel the purchase contract.

**Discussion of Amendments to Code of Virginia §§ 55-79.88.2, 55-79.88.3 and 55-79.90.A.9 Effective July 1, 2014**

The Board discussed the amendments to *Code of Virginia* §§ 55-79.88.2, 55-79.88.3, and 55-79.90.A.9 which will become effective July 1, 2014 and directed staff to post a notice on the DPOR website.

Ms. Trigiani indicated that House Bill 332 will be carried over to the 2015 session.

**Discussion of Legislation/ Follow-up from 2014 Session**

Ms. Henshaw provided a memorandum with several legislative ideas for the 2015 General Assembly session. After discussion, the Board agreed to add a legislative proposal to increase the Recovery Fund minimum balance so that when the recovery fund drops below \$500,000.00, staff can transfer money to the recovery fund. The Board also suggested requiring associations and common interest community managers to pay a recovery fund fee at the time of community association annual report

**Preparing for 2015 Session**

and common interest community manager license renewal.

After further discussion, the Board agreed by consensus to support the suggested legislative amendments intended to clarify the statutes pertinent to the Board's registration programs and its authority to enforce compliance.

Ms. Gillespie provided a handout on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman's office. Specific information included:

**Ombudsman's Report**

- The number of phone calls received,
- The number of emails received,
- The number of complaints filed, and
- The types of complaints received, including:

56 Notices of Final Adverse Decision since September 13, 2012

**General Concerns and Observations:**

- Club Land'Or - bankruptcy, Better Business Bureau now receiving complaints about Club Land'Or.
- Very few valid notice of final adverse decisions – many associations continue to process complaints that are not appropriate for the complaint process.
- Fawn Lake – court case in Spotsylvania, findings in line with determination.
- Determinations have been categorized by topic so they can go on the web and be searchable, working on a records retention policy for determinations.

Ms. Henshaw provided an update on the Ombudsman Committee. Mr. Melson will Chair the Ombudsman Committee; Ms. Helmick, Mr. Mazzei, and Mr. Rogers will serve as Board member representatives; and Ms. Trigiani will be an ex-officio member. The Ombudsman Committee will work with the Ombudsman's office and address items as previously identified: unregistered common interest community associations, lack of complaint procedures, defunct/dysfunctional boards, and a recommendation to the Housing Committee regarding House Bill 332.

**Follow-up on Ombudsman Committee**

Staff will coordinate with the Ombudsman Committee members to set a meeting date for either August 27, 2014 or September 10, 2014. The

Ombudsman Committee will provide a report at the next Board meeting.

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes.

**Board Financial Statements**

A copy of the financial statement for the Common Interest Community Management Recovery Fund for the month ended on April 30, 2014 was also provided. No claims have been filed.

**Recovery Fund Statements**

After discussion, the Board moved to adopt the following 2015 Board and Training Program Committee meeting dates by consensus:

**2015 Proposed Meeting Schedule**

- March 25, 2015 – Training Program Review Committee Meeting
- March 26, 2015 – Board Meeting
  
- September 9, 2015 – Training Program Review Committee Meeting
- September 10, 2015 – Board Meeting
  
- December 9, 2015 – Training Program Review Committee Meeting
- December 10, 2015 – Board Meeting

Staff was directed to revisit the June 2015 Training Program Review Committee and Board meeting dates. An alternative date will be considered at the next Board meeting.

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attend. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event Calendar**

Ms. Henshaw received a press release stating Ms. Trigiani was appointed to the Board of Visitors at Longwood University. The Board members and staff congratulated Ms. Trigiani on her Board member appointment.

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Complete Conflict of Interest Forms and Travel Vouchers**

There being no further business, the meeting was adjourned at 12:24

**Adjourn**

p.m.

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Lucia Anna Trigiani, Chair

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Jay W. DeBoer, Secretary

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